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paper mill to remove broken paper from sets of rollers. Electricity generated attracted the paper so strongly that it was drawn in between the rollers and his arms were crushed. In the trial plaintiff endeavored to introduce evidence of similar prior accidents in the same place, but it was excluded. As this was an appeal from judgment on direction of a verdict, the court considered the appellant entitled to most favorable inferences from evidence given and also from evidence erroneously excluded. *Held*, That it could not be said as matter of law that the accident was caused by an obvious danger, the risk of which the employe assumed. Kellogg, J., dissented.

To the general rule that a servant assumes the ordinary risks of his employment, and even the risks from unsafe machinery which are apparent and obvious, we find the exception that the master is liable if he exposes persons to perils which they, by reason of youth, do not comprehend. *Coombs v. New Bedford Cordage Co.*, 102 Mass. 572; *Union Pac. R. R. Co. v. Fort*, 17 Wall. 553, 14 A. & E. Enc. 892; *Illinois, etc., R. R. Co. v. Welch*, 52 Ill. 183; *Malone v. Hawley*, 46 Cal. 408.

DEEDS—MORTGAGES—WARRANTY—HOPPER v. SMYSER—SMYSER v. HOPPER, 45 Atl. 206.—The habendum clause in a deed of conveyance declared the property subject to a mortgage, but in the warranty immediately following the mortgage was not expressly excepted. *Held*, that the failure to except in the warranty did not make the grantor liable for the mortgage, because the habendum clause limits the estate and interest which is described as conveyed, and the covenant of warranty could not enlarge an estate and interest thus limited.

The contrary view is held in some States, although an outstanding mortgage is not a breach of the covenant of warranty, yet the covenant is an undertaking that the covenantee shall at all times enjoy the land free from all such encumbrances existing at the time of the grant. 8 A. & E. Encycl. of L., 2d ed. 97. *King v. Kilbride*, 58 Conn. 109, and cases cited.

DIVORCE—ADULTERY—CONDONATION—GEOGER v. GEOGER, 45 Atl. 349 (N. J.).—In divorce proceedings against a woman for adultery, where she proved forgiveness by words on the part of her husband, and also his promise to receive her back into his home and convey property to her; this was held by the court to be an insufficient condonation of her offense by the husband.

This decision is contrary to the rule in *Shackelton v. Shackelton*, 48 N. J. Eq. 364, which held "that forgiveness may be expressed in words, and possibly by conduct without words, to show that the injured party meant to blot out the whole past."

The court based its decision upon *Teats v. Teats*, 1 S. W. and Tr. 334, which held that "words, however strong, can at the highest be regarded only as an imperfect forgiveness, and must remain incomplete, unless followed by a reconciliation."

Condonation requires reunion and reconciliation; a restoration of the offender to all the marital rights. 9 A. and E. Ency. Law, 222. The husband in this case showed only an inclination to condone the offense.

DIVORCE—ADULTERY—CUSTODY OF CHILDREN—OSTERHOUDT v. OSTERHOUDT, 62 N. Y., Sup. 529.—*Held*, that the court will not disturb a decree granting the custody of children to the wife from whom the plaintiff had obtained a divorce, on the ground that she had procured the divorce in a foreign jurisdiction and remarried, where no other misconduct is shown, and she has a comfortable home and the children are attached to her,

The New York court will not recognize the defendant's North Dakota divorce, and views her subsequent marriage as adultery. But it leaves her the custody of the children on the ground that her only misconduct depended on the legal question of the jurisdiction of the North Dakota courts in granting her a divorce, and that she was the better fitted for their custody. Barrett and

Van Brunt dissenting on the ground that this is a momentous departure from precedent to give custody of children to the guilty party; that her divorce being not only void from want of jurisdiction, but inherently fraudulent; and that her home is thus not a proper place for the children. The dissenting opinion agrees with *McGown v. McGown*, 19 N. Y. App. Div. 368, the facts of which are the same. Generally, a mother, guilty of adultery, is not a fit custodian for her children (see cases cited, *Am. Eng. Ency. of Law*, 2d ed., 9-689).

The custody of children is given to the mother who has been guilty of adultery in *Com. v. Addicks and wife*, 5 Binn (Pa.) 520, and *Haskell v. Haskell*, 152 Mass. 26.

ENTRAPMENT—PUBLIC POLICY—WALTON v. CITY OF CANON CITY, 59 Pac Rep. 841 (Colo.).—*Held*, where a city marshal instigated a third party to procure the violation of a liquor law, public policy would not permit the collection of the penalty. The marshal's duty was to discover such violation.

But where a detective, without orders from the prosecuting attorney, procures a similar violation, it was held to be no defense. *People v. Curtis*, 54 N. W. Rep. 767 (Mich.).

ESTATES—DEVISE UPON CONDITION—VALIDITY—WRIGHT ET AL. v. MAYER, 62 N. Y. Sup. 610.—Plaintiff, while living separate from her husband, took land under a devise which provided that, if they should resume their marital relations, the estate so devised should cease and become vested in the testator's executors in trust to pay the income to the wife for life, and on her death to pay the principal to her children. *Held*, that the condition was valid.

This condition is considered valid by a divided court, on the authority of *Cooper v. Remsen*, 5 Johns Ch. 459. This seems to be correct, for while it is well settled that conditions annexed to a gift, the tendency of which is to induce husband and wife to separate or be divorced, are held void on the ground of public policy, even *Whiton v. Snyder*, 54 Hun. 552, which is here quoted against the validity of the condition, says "a provision for destitute wife might be humane" and valid.

HABEAS CORPUS—PRISONER HELD BY EXTRADITION WARRANT—FUGITIVE FROM JUSTICE—IN RE TOD, 81 N. W. 637 (S. D.).—Application for a writ of habeas corpus, the petitioner being held under an extradition warrant. On the hearing it was clearly shown, that the prisoner had come to South Dakota from Nebraska at the request of the party he had defrauded, that proceedings were instituted against him in Nebraska by the injured party, in pursuance of which the petitioner was held under an extradition warrant. *Held*, that the petitioner was not a fugitive from justice, and that he should be discharged from custody.

The motives that induce the withdrawal from the State are immaterial, where a person who has committed a crime departs without awaiting its results. (*In re White*, 55 Fed. Rep. 54; *State v. Richter*, 37 Minn. 436). But the mere fact that the accused left the State is not enough of itself to make him a fugitive from justice. All the circumstances in relation to the commission of the offense, the time and manner of leaving the State, should be inquired into. (*Amer. and Eng. Ency. of Law* (new ed.), Vol. 12, p. 602; Opinion of Governor Fairfield in case of *Certain Fugitives* (Me.), *Spear on Extradition* (3d ed.) 381; Opinion of Governor Collum in *Goffigan and Merrick's case*, *Spear on Extradition* (3d ed.) 385, 713.

HUSBAND AND WIFE—ACTION FOR ALIENATING HUSBAND'S AFFECTION—CROCKER v. CROCKER, 96 Fed. 702.—Action by a wife for the alienation of her husband's affection. No charge was made in the declaration of criminal conversation. *Held*, that a wife cannot, under the laws of Massachusetts, maintain an action against a third person for merely alienating the affection of her husband.